



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration
[Docket No. 22-34]**

Gerald M. Baltz, N.P.; Decision and Order

On June 3, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Gerald M. Baltz, N.P. (hereinafter, Respondent). OSC, at 1, 3. The OSC proposed the revocation of Respondent's Certificate of Registration No. MB2171128 at the registered address of 8060 Melrose Ave. Ste 200, Los Angeles, CA 90046. *Id.* at 1. The OSC alleged that Respondent's registration should be revoked because Respondent is "without authority to handle controlled substances in the State of California, the state in which [he is] registered with DEA." *Id.* at 1-2 (citing 21 U.S.C. 824(a)(3)).¹

By letter dated July 11, 2022,² Respondent requested a hearing. On July 12, 2022, Administrative Law Judge Paul E. Soeffing (hereinafter, the ALJ) issued an Order for Evidence of Lack of State Authority and Directing the Government to File Evidence Regarding the Service of the Order to Show Cause (hereinafter, Briefing Order). On July 26, 2022, the Government filed its Submission of Evidence and Motion for Summary Disposition (hereinafter, Motion for Summary Disposition). On August 10, 2022,³ Respondent filed his Opposition to Government's Motion for Summary Disposition (hereinafter, Opposition).⁴

¹ According to Agency records, Respondent's Certificate of Registration No. MB2171128 expired on July 31, 2022. The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68,474 (2019).

² The record demonstrates that service of the OSC on Respondent was accomplished on or before June 28, 2022, *see* Government Exhibit (hereinafter, GX) E, at 1-2, and the Government does not contest the timeliness of the request for a hearing.

³ The record demonstrates that Respondent's filing was untimely. *See* Briefing Order, at 2; Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision), at 2 n.2. Nonetheless, the Agency will fully consider the Respondent's arguments made therein.

⁴ In his Opposition, Respondent argued that his DEA registration should not be revoked because he maintains active nursing licenses in Colorado and because he is still challenging the underlying action against his California nursing licenses. Opposition, at 3-6.

On August 25, 2022, the ALJ granted the Government's Motion for Summary Disposition and recommended the revocation of Respondent's DEA registration, finding that because Respondent lacks authority to handle controlled substances in California, there is no genuine issue of material fact. Recommended Decision, at 6.⁵

The Agency issues this Decision and Order based on the entire record before it, 21 CFR 1301.43(e), and makes the following findings of fact.

FINDINGS OF FACT

On November 19, 2021, an Administrative Law Judge from the State of California, Office of Administrative Hearings, issued a Proposed Decision revoking Respondent's California nursing licenses. Government Exhibit (hereinafter, GX) C, at 45. On January 21, 2022, the State of California, Department of Consumer Affairs, Board of Registered Nursing (hereinafter, the Board), issued a Decision and Order adopting the Administrative Law Judge's Proposed Decision, effective February 18, 2022. *Id.* at 1. On February 24, 2022, the Board issued an Order Denying Reconsideration in which Respondent's request for reconsideration of the Proposed Decision was denied and the Board's January 21, 2022 Decision and Order was made effective February 28, 2022. GX B.

According to California's online records, of which the Agency takes official notice, Respondent's nursing licenses are revoked.⁶ California DCA License Search, <https://search.dca.ca.gov> (last visited date of signature of this Order). Accordingly, the Agency

⁵ By letter dated September 21, 2022, the ALJ certified and transmitted the record to the Agency for final agency action and advised that neither party filed exceptions.

⁶ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Respondent may dispute the Agency's finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

finds that Respondent is not licensed to engage in the practice of nursing in California, the state in which he is registered with the DEA.⁷

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).⁸

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the

⁷ Regarding Respondent’s argument that his DEA registration should not be revoked because he maintains active nursing licenses in Colorado, Respondent’s DEA registration is based on his California nursing licenses, which have undeniably been revoked. *Omar Garcia, M.D.*, 87 FR 32,186, 32,187 n.6 (2022).

⁸ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617. Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner’s registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 FR at 71,371 (quoting *Anne Lazar Thorn*, 62 FR 12,847, 12,848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy*, 72 FR 18,273, 18,274 (2007); *Wingfield Drugs*, 52 FR 27,070, 27,071 (1987). Thus, it is of no consequence that Respondent is still challenging the underlying action. What is consequential is the Agency’s finding that Respondent is not currently authorized to dispense controlled substances in California, the state in which he is registered with the DEA.

substance for that delivery.” Cal. Health & Safety Code § 11010 (West 2022). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.” *Id.* at § 11026(c).

Here, the undisputed evidence in the record is that Respondent lacks authority to practice nursing in California. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in California. Thus, because Respondent lacks authority to practice nursing in California and, therefore, is not authorized to handle controlled substances in California, Respondent is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Respondent’s DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MB2171128 issued to Gerald M. Baltz, N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Gerald M. Baltz, N.P., to renew or modify this registration, as well as any other pending application of Gerald M. Baltz, N.P., for additional registration in California. This Order is effective **[INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on November 1, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an

official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,
Federal Register Liaison Officer,
Drug Enforcement Administration.

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